



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0952]

RIN 1625-AA01

Anchorage Regulations; Special Anchorages Areas within the First Coast Guard

District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the notes for its First Coast Guard District special anchorage area regulations and to remove language from the text of four of these regulations because those provisions are inconsistent with simply designating the location of a special anchorage area. These existing notes and regulatory text provisions, which contain obsolete and duplicative language, would be replaced with a note in a new section we are adding that would apply to all special anchorage area regulations in the First Coast Guard District. The note would advise interested persons that state and local regulations may apply and that they should contact other authorities, such as the local harbormaster, to ensure compliance with any such applicable regulations. These changes are primarily editorial in nature and are intended to clarify and update First Coast Guard District special anchorage area regulations. This proposed rule would not create, remove, or change any previously established special anchorage areas in the First Coast Guard District.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0952 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Mr. Craig Lapiejko, Waterways Management at First Coast Guard District, telephone 617-223-8351, e-mail craig.d.lapiejko@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
SAA	Special Anchorage Area
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The First Coast Guard District has received a request to remove the note in 33 CFR 110.32 – Hingham Harbor, Hingham, Massachusetts. This regulation with its note was added to 33 CFR part 110 soon after the Coast Guard was given authority for Federal anchorage regulations more than 50 years ago.

In 1967, as part of the creation of the Department of Transportation and the government restructuring that followed, authority for federal anchorage regulations was transferred from the U.S. Army Corps of Engineers to the Coast Guard as reflected in a rule published December 12, 1967 (32 FR 17726). We have made a copy of this rule available in the docket along with other rulemaking documents we reference that were published before 1995. At the time of transfer, the Coast Guard adopted the special anchorage area (SAA) regulations that were previously in effect. The regulations for SAAs located in the First Coast Guard District were moved from 33 CFR part 202 to 33

CFR 110.2 through 110.60. During the transfer of the SAA regulations from the U.S. Army Corps of Engineers to the Coast Guard we did not focus on the notes to these regulations. Over the ensuing 50 years, the SAAs within the First Coast Guard District, 33 CFR 110.2 through 110.60, have been amended numerous times as SAAs were added, amended, or removed.

In a rule published August 3, 1968 (33 FR 11079), the Coast Guard added §110.32 to 33 CFR part 110 which created five separate SAAs in Hingham Harbor, MA. That regulation was issued in response to a request from the Chairman of the Board of Selectmen of Hingham, MA. The note in that regulation said that:

- These areas will be principally used by yachts and other recreational craft.
- Temporary floats or buoys for marking anchors will be allowed in the areas but fixed piles or stakes may not be placed.
- The anchoring of vessels and the placing of moorings in these areas will be under the jurisdiction of the local Harbor Master.

In a 1988 notice of proposed rulemaking (NPRM)(53 FR 7949, 7950, Mar. 11, 1988), among other proposed changes, the Coast Guard proposed to remove notes from SAA regulations including the note for 33 CFR 110.32 – Hingham Harbor, Hingham, Massachusetts. Later in 1988, the Coast Guard published a supplemental NPRM (53 FR 48935, Dec. 5, 1988) to both expand its suggested revisions and address comments on the NPRM. Then in 1995, citing both the lapse of time since proposals in 1988 and the lack of resources to complete the rulemaking, the Coast Guard terminated that rulemaking (60 FR 2364, Jan. 9, 1995).

In response to the 2019 request to remove the note for §110.32, we decided to adopt the sound reasoning given in 1988 to remove both that note and notes for all other regulations for SAAs in the First Coast Guard District. In the 1988 supplemental NPRM (53 FR 48935, Dec. 5, 1988), we stated that the Coast Guard does not regulate vessel

activities within SAAs as it does in anchorage grounds, and that the only effect of designating a SAA under the authority of 33 U.S.C. 2071 is that vessels under 20 meters in length (65 feet) anchored in these areas do not have to exhibit the lights and shapes or sound signals required by Rules 30 and 35 of the Inland Rules.¹ We also noted in the supplemental NPRM (53 FR 48935, Dec. 5, 1988) that other vessel activity within these SAAs may be regulated by local authorities as long as the local regulations do not conflict with Federal regulations which may be promulgated under other statutory authority. Earlier that year, in the NPRM (53 FR 7949, 7950, Mar. 11, 1988), we noted that inclusion of references to state or local ordinances in part 110 is not desirable because it makes it appear as though the Coast Guard has incorporated these ordinances into the Federal regulations.

This proposed rule is being issued under authority in 33 U.S.C. 2071. That authority has been delegated to the Coast Guard by Department of Homeland Security Delegation No. 0170.1, and to District Commanders by 33 CFR 1.05-1(e).

III. Discussion of Proposed Rule

This proposed rule would remove existing notes in regulations for SAAs in the First Coast Guard District and remove the regulatory provisions in §110.25, §110.29, §110.50d, and §110.60 that do not designate the location of SAAs. Additionally, we would add §110.3, entitled, “First Coast Guard District Special Anchorage Areas.” Its text would identify SAA regulations for the First Coast Guard District (§110.4 through §110.60) and its note would advise those planning to use a SAA in the First District that state ordinances, local ordinances, or both, may apply to those anchoring there and that the local harbormaster is often the best source of information about any such ordinances. These ordinances may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

¹ Currently these two rules may be found in 33 CFR 83.30 and 83.35.

These changes are primarily editorial in nature and are intended to clarify and update the notes in this part. This rule does not create, remove, or change any SAA. Vessels less than 65 feet in length, when at anchor in these SAAs, are not required to sound signals or display anchorage lights or shapes when at anchor.

This proposed rule would remove notes from the following sections in 33 CFR part 110 that designate SAAs in the First Coast Guard District:

§ 110.4, Penobscot Bay, Maine.

§ 110.5, Casco Bay, Maine.

§110.6, Portland Harbor, Portland, Maine (between Little Diamond Island and Great Diamond Island).

§110.8, Lake Champlain, New York and Vermont.

§110.26, Marblehead Harbor, Marblehead, Massachusetts.

§110.29, Boston Inner Harbor, Massachusetts.

§110.30, Boston Harbor, Massachusetts.

§110.31, Hull Bay and Allerton Harbor at Hull, Massachusetts.

§110.32, Hingham Harbor, Hingham, Massachusetts.

§110.37, Sesuit Harbor, Dennis, Massachusetts.

§110.38, Edgartown Harbor, Massachusetts.

§110.45a, Mattapoissett Harbor, Mattapoissett, Massachusetts.

§110.50, Stonington Harbor, Connecticut.

§110.50a, Fishers Island Sound, Stonington, Connecticut.

§110.50b, Mystic Harbor, Groton and Stonington, Connecticut.

§110.50c, Mumford Cove, Groton, Connecticut.

§110.51, Groton, Connecticut.

§110.52, Thames River, New London, Connecticut.

§110.53, Niantic, Connecticut.

§110.55, Connecticut River, Connecticut.

§110.55a, Five Mile River, Norwalk and Darien, Connecticut.

§110.55b, Connecticut River, Old Saybrook, Connecticut.

§110.56, Noroton Harbor, Darien, Connecticut.

§110.58, Cos Cob Harbor, Greenwich, Connecticut.

§110.59, Eastern Long Island, New York.

§110.60, Captain of the Port, New York.

For a specific listing of the notes being removed, please review the proposed regulatory text at the end of this NPRM.

Additionally, this proposed rule would remove regulatory text from four CFR sections because that text is inconsistent with simply designating the location of a SAA. In §110.25, Salem Sound, Massachusetts, we propose to remove the last two sentences of paragraph (c). In §110.29, Boston Inner Harbor, Massachusetts, we propose to remove paragraph (d)(2). In §110.50d, Mystic Harbor, Noank, Connecticut, we propose to remove paragraph (b). Finally, in §110.60, Captain of the Port, New York; we would remove paragraphs (c)(13)(i), (d)(7)(i), and (d)(9)(i).

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been

designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

These changes are primarily editorial in nature and are intended to clarify and update notes for First Coast Guard District SAA regulations and to remove regulatory text in four CFR sections that is not needed to designate the location of SAAs. This proposed rule would not create, remove, or change any previously established SAAs in the First Coast Guard District.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We reach this conclusion based on the reasons stated in section IV.A above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER

INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule would remove existing notes in regulations for SAAs in the First Coast Guard District and remove regulatory text in four CFR sections that is not needed to designate the location of SAAs. These existing notes and provisions in regulatory text, would be replaced with a note in a newly added section that would apply to all SAA regulations in the First Coast Guard District. The note would advise those planning to use a SAA in the First Coast Guard District that state ordinances, local ordinances, or both, may apply to those anchoring there and that the local harbormaster is often the best source of information about any such ordinances. Normally such actions are categorically excluded from further review under paragraph A3 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 110

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110-- ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Add §110.3 to read as follows:

§110.3 First Coast Guard District Special Anchorage Areas.

Regulations designating special anchorage areas in the First Coast Guard District

appear in §110.4 through §110.60.

Note to §110.3: Those planning to use these special anchorage areas are advised that state ordinances, local ordinances, or both, may apply. The local harbormaster is often the best source of information about any such ordinances.

§110.4 [Amended]

3. In §110.4, remove the notes to paragraph (a), (b), (c) and (d).

§110.5 [Amended]

4. In §110.5, remove the notes following paragraphs (a-1), (d), (e) and (f).

§110.6 [Amended]

5. In §110.6, remove the note for the section.

§110.8 [Amended]

6. In §110.8, remove the notes following paragraphs (c-2) and (i).

§110.25 [Amended]

7. In §110.25, remove the last two sentences in paragraph (c).

§110.26 [Amended]

8. In §110.26, remove the note for the section.

§110.29 [Amended]

9. In §110.29, redesignate paragraph (d)(1) as paragraph (d), remove paragraph (d)(2), and remove the note to paragraph (d).

§110.30 [Amended]

10. In §110.30, remove the notes to paragraphs (b), (h), (k) through (q).

§110.31 [Amended]

11. In §110.31, remove the note for the section.

§110.32 [Amended]

12. In §110.32, remove the note for the section.

§110.37 [Amended]

13. In §110.37, remove the note for the section.

§110.38 [Amended]

14. In §110.38, remove the note for the section.

§110.45a [Amended]

15. In §110.45a, remove the note for the section.

§110.50 [Amended]

16. In §110.50, remove the note for the section.

§110.50a [Amended]

17. In §110.50a, remove the note for the section.

§110.50b [Amended]

18. In §110.50b, remove the note for the section.

§110.50c [Amended]

19. In §110.50c, remove the note for the section.

§110.50d [Amended]

20. In §110.50d, redesignate paragraph (a) as an undesignated paragraph and remove paragraph (b).

§110.51 [Amended]

21. In §110.51, remove the note for the section.

§110.52 [Amended]

22. In §110.52, remove the note for the section.

§110.53 [Amended]

23. In §110.53, remove the note for the section.

§110.55 [Amended]

24. In §110.55, remove the notes following paragraph (b), (c), (e), (e-1), (e-2) and (g).

§110.55a [Amended]

25. In §110.55a, remove the note for the section.

§110.55b [Amended]

26. In §110.55b, remove the note for the section.

§110.56 [Amended]

27. In §110.56, remove the note for the section.

§110.58 [Amended]

28. In §110.58, remove the note for the section.

§110.59 [Amended]

29. In §110.59, remove the note following paragraph (g).

§110.60 [Amended]

30. In §110.60, remove the notes to paragraphs (a)(2) and (13); (b)(5) and (6); (c)(3); (5) and (6); (d)(2), and (5), and remove paragraphs (c)(13)(i) and (ii), (d)(7)(i) and (ii), and (d)(9)(i) and (ii).

Dated: March 22, 2021

T. G. Allan Jr.,

Rear Admiral, U.S. Coast Guard,

Commander, First Coast Guard District.

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